

ESSB 5004 - H COMM AMD
By Committee on Finance

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 69.50.535 and 2015 2nd sp.s. c 4 s 205 are each
4 amended to read as follows:

5 (1)(a) There is levied and collected a marijuana excise tax equal
6 to thirty-seven percent of the selling price on each retail sale in
7 this state of marijuana concentrates, useable marijuana, and
8 marijuana-infused products. This tax is separate and in addition to
9 general state and local sales and use taxes that apply to retail
10 sales of tangible personal property, and is not part of the total
11 retail price to which general state and local sales and use taxes
12 apply. The tax must be separately itemized from the state and local
13 retail sales tax on the sales receipt provided to the buyer.

14 (b) The tax levied in this section must be reflected in the price
15 list or quoted shelf price in the licensed marijuana retail store and
16 in any advertising that includes prices for all useable marijuana,
17 marijuana concentrates, or marijuana-infused products.

18 (2)(a) Until January 1, 2027, the tax levied by subsection (1) of
19 this section does not apply to sales, by a marijuana retailer with a
20 medical marijuana endorsement to qualifying patients or designated
21 providers who have been issued a recognition card, of marijuana
22 concentrates, useable marijuana, or marijuana-infused products,
23 identified by the department in rules adopted under RCW 69.50.375(4)
24 in chapter 246-70 WAC as being compliant marijuana products.

25 (b) Each seller making exempt sales under this subsection (2)
26 must maintain information establishing eligibility for the exemption
27 in the form and manner required by the board.

28 (c) The board must provide a separate tax reporting line on the
29 excise tax form for exemption amounts claimed under this subsection
30 (2).

31 (d) To assist with the review required in section 2 of this act,
32 the board must consult with the joint legislative audit and review

1 committee to determine if there is additional information on sales
2 that sellers must report to the board beginning January 1, 2023.

3 (3) All revenues collected from the marijuana excise tax imposed
4 under this section must be deposited each day in the dedicated
5 marijuana account.

6 ~~((3))~~ (4) The tax imposed in this section must be paid by the
7 buyer to the seller. Each seller must collect from the buyer the full
8 amount of the tax payable on each taxable sale. The tax collected as
9 required by this section is deemed to be held in trust by the seller
10 until paid to the board. If any seller fails to collect the tax
11 imposed in this section or, having collected the tax, fails to pay it
12 as prescribed by the board, whether such failure is the result of the
13 seller's own acts or the result of acts or conditions beyond the
14 seller's control, the seller is, nevertheless, personally liable to
15 the state for the amount of the tax.

16 ~~((4))~~ (5) The definitions in this subsection apply throughout
17 this section unless the context clearly requires otherwise.

18 (a) ~~("Board" means the state liquor and cannabis board.~~

19 ~~(b))~~ "Retail sale" has the same meaning as in RCW 82.08.010.

20 ~~((e))~~ (b) "Selling price" has the same meaning as in RCW
21 82.08.010, except that when product is sold under circumstances where
22 the total amount of consideration paid for the product is not
23 indicative of its true value, "selling price" means the true value of
24 the product sold.

25 ~~((d))~~ (c) "Product" means marijuana, marijuana concentrates,
26 useable marijuana, and marijuana-infused products.

27 ~~((e))~~ (d) "True value" means market value based on sales at
28 comparable locations in this state of the same or similar product of
29 like quality and character sold under comparable conditions of sale
30 to comparable purchasers. However, in the absence of such sales of
31 the same or similar product, true value means the value of the
32 product sold as determined by all of the seller's direct and indirect
33 costs attributable to the product.

34 ~~((5))~~ (6) (a) The board must regularly review the tax level
35 established under this section and make recommendations, in
36 consultation with the department of revenue, to the legislature as
37 appropriate regarding adjustments that would further the goal of
38 discouraging use while undercutting illegal market prices.

39 (b) The ~~((state liquor and cannabis))~~ board must report, in
40 compliance with RCW 43.01.036, to the appropriate committees of the

1 legislature every two years. The report at a minimum must include the
2 following:

3 (i) The specific recommendations required under (a) of this
4 subsection;

5 (ii) A comparison of gross sales and tax collections prior to and
6 after any marijuana tax change;

7 (iii) The increase or decrease in the volume of legal marijuana
8 sold prior to and after any marijuana tax change;

9 (iv) Increases or decreases in the number of licensed marijuana
10 producers, processors, and retailers;

11 (v) The number of illegal and noncompliant marijuana outlets the
12 board requires to be closed;

13 (vi) Gross marijuana sales and tax collections in Oregon; and

14 (vii) The total amount of reported sales and use taxes exempted
15 for qualifying patients. The department of revenue must provide the
16 data of exempt amounts to the board.

17 (c) The board is not required to report to the legislature as
18 required in (b) of this subsection after January 1, 2025.

19 ~~((+6))~~ (7) The legislature does not intend and does not
20 authorize any person or entity to engage in activities or to conspire
21 to engage in activities that would constitute per se violations of
22 state and federal antitrust laws including, but not limited to,
23 agreements among retailers as to the selling price of any goods sold.

24 NEW SECTION. **Sec. 2.** (1) The joint legislative audit and review
25 committee must review the tax exemption under section 1 of this act
26 to identify any changes in consumer behavior and determine whether
27 the exemption results in an unanticipated decrease in state revenue.
28 The review must include:

29 (a) An assessment of the amount of new qualifying patients or
30 designated providers under RCW 69.51A.010 occurring after the
31 effective date of this section as compared to prior years;

32 (b) Any changes in the amount of sales of tax-exempt products
33 identified in section 1 of this act; and

34 (c) Any other information the joint legislative audit and review
35 committee deems necessary to assess any changes in consumer behavior
36 or revenue collections resulting from the tax exemption under section
37 1 of this act.

38 (2) The joint legislative audit and review committee may access
39 data from the department of revenue, the department of health, or any

1 other state agency as necessary to complete its review of the tax
2 exemption under section 1 of this act.

3 (3) The joint legislative audit and review committee must submit
4 a report of its findings to the legislature by December 1, 2025.

5 NEW SECTION. **Sec. 3.** This act takes effect January 1, 2023."

6 Correct the title.

EFFECT: Requires the LCB to consult with JLARC on relevant reporting information needed for JLARC review.

--- END ---